IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.5022 of 2006
To
FIRST APPEAL No.5028 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

==========

SPECIAL LAQ OFFICER & ANR. - Appellants
Versus
PARBATSING GANDAJI PARMAR & ORS. - Respondents

==========

Appearance:

First Appeal Nos.5022 to 5024 of 2006
MR KRUNAL D PANDYA, AGP Appellants.

First Appeal Nos.5025 to 5026 of 2006
MS KRINA P CALLA, AGP Appellants.

First Appeal Nos.5027 to 5028 of 2006
MS TANUJA N KACHCHHI, AGP Appellants.

First Appeal Nos.5022 to 5028 of 2006
MR AJ PATEL for Original Claimants.
None for Respondent Nos.2 & 3

==========

CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 14/12/2006

COMMON ORAL JUDGMENT

(Per : HON'BLE SMT. JUSTICE ABHILASHA KUMARI)

These appeals filed under Section 54 of the Land Acquisition Act, 1894 ("*the Act*" for short) read with Section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated October 30, 2004 rendered by the learned 2nd Extra Assistant Judge & Special Judge (L.A.R.), Ahmedabad (Rural) at Navrangpura, in Land Acquisition Case Nos.27 of 1999 to 33 of 1999 by which the claimants have been awarded additional compensation at the rate of Rs.19.80 paise per square metre over and above the compensation offered to them by the Special Land Acquisition Officer at the rate of Rs.1.50 ps. per square metre by his award dated February 18, 1998, for their acquired lands.

2. The Executive Engineer, Narmada Project, Goraiya Branch Canal, Gandhinagar, submitted a proposal before the State Government to acquire the lands of Village: Kanz, Taluka: Viramgam, District: Ahmedabad for the public purpose of construction of Narmada Canal. On perusal of the said proposal, the

State Government was satisfied that the lands of Village: Kanz were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued, which was published in the official gazette on March 7, 1994. The land-owners were thereafter served with the notices issued under Section 4(1) of the Act. They opposed the proposed acquisition. After considering their objections, a report under Section 5-A(2) of the Act was forwarded by the Special Land Acquisition Officer to the State Government. On scrutiny of the said report, the State Government was satisfied that the lands of Village: Kanz, which were specified in the notification published under Section 4(1) of the Act, were needed for the public purpose of construction of Narmada Canal. Therefore, a declaration under Section 6 of the Act was made, which was published in the official gazette on February 29, 1996. The interested persons were thereafter served with the notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed the compensation at the rate of Rs.30/-

per square metre. However, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated February 18, 1998, offered compensation to the claimants at the rate of Rs.1.50 ps. per square metre. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court, Ahmedabad (Rural) at Navrangpura, where they were registered as Land Acquisition Case Nos.27 of 1999 to 33 of 1999.

3. On behalf of the claimants, witness Mr.Galabsang Agarsang Parmar was examined at Exhibit 27. Apart from stating that the lands acquired were highly fertile and that each claimant was earning net income of Rs.35,000/- to Rs.40,000/- per *vigha* per year from the sale of agricultural produces like

cotton, *juvar, til,* millet, etc., the said witness produced previous award of the Reference Court relating to the lands of Village: Detroj in support of the claim of the claimants for enhanced compensation. The witness mentioned in his testimony that the boundaries of Village: Detroj and Village: Kanz were common. The witness further stated that the lands of Village: Detroj were similar in all respects to the lands of Village: Kanz, which were acquired in the instant case. The witness also mentioned that even the crop-pattern in the two villages was also the same. Though this witness was cross-examined on behalf of the appellants, nothing substantial could be elicited from him.

4. On behalf of the appellants, Mr.Ambalal Bechardas Patel, who was Deputy Executive Engineer, was examined at Exhibit 33. This witness stated that he had no personal knowledge about the acquisition proceedings initiated for acquiring the lands of Village: Kanz and was deposing before the Court on the basis of record available in the office. However, in the cross-examination, the witness

admitted that boundaries of Village: Detroj and Village: Kanz were common.

5. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of Village: Detroj was a relevant piece of evidence and furnished good guidance for the purpose of determining the market value of the lands acquired in the instant case. The Reference Court further noticed that notification under Section 4(1) of the Act was published in the official gazette on April 26, 1993 for acquiring the lands of Village: Detroj whereas in the instant case, notification under Section 4(1) of the Act was published in the official gazette on March 7, 1994 and in view of time-gap between the two notifications, the claimants were also entitled to the benefit of reasonable rise in price of the lands at the rate of 10% per annum. In ultimate analysis, the Reference Court has awarded additional compensation at the rate of Rs.19.80 ps. per square metre by the impugned judgment and award dated October 30, 2004, giving rise to these appeals.

6. This Court has heard Mr.Krunal D.Pandya, learned Assistant Government Pleader for the appellants, and Mr.A.J.Patel, learned advocate for the original claimant(s) in each appeal, at length and in great detail. This Court has also taken into consideration the paper-book supplied by the learned counsel for the claimants, which includes documentary as well as oral evidence adduced by the parties before the Reference Court.

7. From the record of the case, it is evident that the witness for the claimants could not make his assertion good that each claimant was earning net income of Rs.35,000/- to Rs.40,000/- per *vigha* per year from the sale of agricultural produces. It is an admitted position that the enhanced compensation was never claimed by the claimants either on yield basis or on the basis of comparable sale instances. What was relied upon by the claimants was previous award of the Reference Court relating to the lands of Village: Detroj. It was produced at Exhibit 25. Exhibit 25 indicates that the lands of Village:

Detroj were acquired for the public purpose of construction of Goraiya Branch of Narmada Canal pursuant to publication of notification issued under Section 4(1) of the Act in the official gazette on April 26, 1993. Therein the Land Acquisition Officer by his award dated March 19, 1996 had offered compensation to the claimants at the rate of Rs.1.65 paise per square metre for irrigated lands and Rs.1.10 paise per square metre for non-irrigated lands. Feeling aggrieved, the claimants had sought references. Accordingly, references were made to the District Court, Ahmedabad (Rural), where they were registered as Land Reference Case Nos.2206 of 1996 to 2223 of 1996. The award further shows that on behalf of the claimants, witness Mr.Gandabhai Keshavbhai Patel, was examined whereas on behalf of the appellants, witness Mr.Dahyabhai Naranbhai Patel was examined. On appreciation of evidence adduced by the parties, the Reference Court by judgment and award dated November 3, 1999 awarded additional compensation to the claimants at the rate of Rs.18/- per square metre. The evidence adduced by the parties in the instant case before the Reference Court

further indicates that feeling aggrieved by the award dated November 3, 1999, the State Government had preferred First Appeal Nos.4587 to 4603 of 2001 before the High Court and the High Court had dismissed the same by judgment dated October 15, 2001. As observed earlier, the witness for the claimants, i.e. Mr.Galabsang Agarsang Parmar, examined at Exhibit 27, asserted that the lands of Village: Kanz and Village: Detroj, which were acquired earlier, were similar in all respects and even the crop-pattern was also the same. The evidence further shows that the boundaries of Village: Kanz and Village: Detroj were common. It is well settled that previous award of the Reference Court relating to the lands of a village, which has attained finality, can be taken into consideration and relied upon for the purpose of determining market value of similar lands acquired from the adjoining village. Therefore, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on the previous award of the Reference Court relating to the lands of Village: Detroj for the purpose of determining market value of the lands

acquired in the instant case. The notification under Section 4(1) of the Act was published in the official gazette on April 26, 1993 for acquiring the lands of Village: Detroj whereas in the instant case, the notification issued under Section 4(1) of the Act was published in the official gazette on March 7, 1994 and in view of time-gap between the two notifications, the claimant would be entitled to the benefit of rise in price of the land at the rate of 10% per annum.

8. On re-appreciation of evidence adduced by the parties before the Reference Court, this Court is of the opinion that correct findings of facts have been recorded by the Reference Court to which settled principles of law have been applied. The learned Assistant Government Pleader could not persuade the Court to take a view different than the one which is taken by the Reference Court. Under the circumstances the appeals, which have no merits, deserve to be dismissed.

For the foregoing reasons, all the Appeals

fail and are dismissed. There shall be no order as to costs. The Registry is directed to draw decree in terms of this judgment.

(J. M. Panchal, J.)

(Smt. Abhilasha Kumari, J.)

Rajendra